

Subpart D—Enforcement Procedures

§ 960.14 In general.

(a) The Secretary shall conduct such enforcement activities as are necessary to carry out his/her obligations under the Act.

(b) Any person who is authorized to enforce the regulations in this part may:

(1) Enter, search and inspect any facility suspected of being used to violate the regulations in this part or any license issued pursuant to the regulations in this part and inspect and seize any equipment or records contained in such facility;

(2) Seize any data obtained in violation of the regulations in this part or any license issued pursuant to the regulations in this part;

(3) Seize any evidence of a violation of the regulations in this part or of any license issued pursuant to the regulations in this part;

(4) Execute any warrant or other process issued by any court of competent jurisdiction; and

(5) Exercise any other lawful authority.

§ 960.15 Penalties and sanctions.

As authorized by Section 203(a) of the Act, if the Secretary or his/her designee determines that the licensee has substantially failed to comply with the Act, the regulations in this part, or any term, condition or restriction of the license, the Secretary or his/her designee may request the appropriate U.S. Attorney to seek an order of injunction or similar judicial determination from the U.S. District Court for the District of Columbia Circuit or a U.S. District Court within which the licensee resides or has its principal place of business, to terminate, modify, or suspend the license, and/or to terminate licensed operations on an immediate basis.

(a) In addition, any person who violates any provision of the Act, any license issued there under, or the regulations in this part may be assessed a civil penalty by the Secretary of not more than \$10,000 for each violation. Each day of operation in violation constitutes a separate violation. Civil pen-

alties will be assessed in accordance with the procedures contained in paragraphs (b) through (g) of this section.

(b) A notice of violation and assessment (NOVA) will be issued by NOAA and served personally or by registered or certified mail, return receipt requested, upon the licensee alleged to be subject to a civil penalty.

(1) The NOVA will contain:

(i) A concise statement of the facts believed to show a violation;

(ii) A specific reference to the provisions of the Act, regulation, license, agreement, or order allegedly violated;

(iii) The findings and conclusions upon which NOAA based the assessment;

(iv) The amount of the civil penalty assessed; and

(v) An explanation of the licensee's rights upon receipt of the NOVA.

(2) In assessing a civil penalty, NOAA will take into account information available to the Agency concerning any factor to be considered under the Act and implementing regulations, and any other information that justice or the purposes of the Act require.

(3) The NOVA may also contain a proposal for compromise or settlement of the case.

(4) The NOVA may also contain a request for the licensee to cease and desist operations which are in violation of the Act, regulations, license, agreement, or order. If the NOVA contains such a request, it will advise the licensee:

(i) Of the amount of time the licensee has to cease and desist the violation. The amount of time will be decided on a case-by-case basis at the sole discretion of the Agency.

(ii) If the licensee fails to respond or comply with NOAA's request, an injunction or other judicial relief may be sought.

(iii) Paragraph (c) of this section applies only to those parts of the NOVA assessing monetary penalties.

(c) The licensee has 14 days from receipt of the NOVA to respond. During this time:

(1) The licensee may accept the penalty or compromise penalty, if any, by taking the actions specified in the NOVA.

(2) The licensee may request a hearing under section 960.10.

(3) The licensee may request an extension of time to respond. NOAA may grant an extension of up to 14 days unless it is determined that the requester could, exercising reasonable diligence, respond within the 14-day period. A telephonic response to the request is considered an effective response, and will be followed by written confirmation.

(4) The licensee may take no action, in which case the NOVA becomes final in accordance with paragraph (d) of this section.

(d) If no request for hearing is timely filed as provided in §960.10, the NOVA becomes effective as the final administrative decision and order of NOAA on the 30th day after service of the NOVA or on the last day of any delay period granted. If a request for hearing is timely filed in accordance with §960.10, the date of the final administrative decision is as provided in that section.

(e) The licensee must make full payment of the civil penalty assessed within 30 days of the date upon which the assessment becomes effective as the final administrative decision and order of NOAA under paragraph (d) of this section or §960.10.

(1) Payment must be made by mailing or delivering to NOAA at the address specified in the NOVA a check or money order made payable in United States currency in the amount of the assessment to the "Treasurer of the United States," or as otherwise directed.

(2) Upon any failure to pay the civil penalty assessed, NOAA may request the Justice Department to recover the amount assessed in any appropriate district court of the United States, or may act under paragraph (f) of this section.

(f) NOAA, in its sole discretion, may compromise, modify, remit, or mitigate, with or without conditions, any civil penalty imposed.

(1) The compromise authority of NOAA under this section is in addition to any similar authority provided in any applicable statute or regulation, and may be exercised either upon the initiative of NOAA or in response to a request by the alleged violator or other interested person. Any such request

should be sent to NOAA at the address specified in the NOVA.

(2) Neither the existence of the compromise authority of NOAA under this section nor NOAA's exercise thereof at any time changes the date upon which an assessment is final or payable.

(g) Factors to be taken into consideration when assessing a penalty may include the nature, circumstances, extent, and gravity of the alleged violation; the licensee's degree of culpability; any history of prior offenses; and such other matters as justice may require.

APPENDIX 1 TO PART 960—FILING INSTRUCTIONS AND INFORMATION TO BE INCLUDED IN THE LICENSING APPLICATION

Prospective applicants are encouraged to contact NOAA for a non-binding preconsultation prior to filing an application or other licensing actions.

(a) *Where to file.* Applications and all related documents shall be filed with the Assistant Administrator, National Environmental Satellite, Data and Information Service (NESDIS), NOAA, Department of Commerce, 1335 East West Highway, Silver Spring, Maryland 20910.

(b) *Form.* No particular form is required but each application must be in writing, must include all of the information specified in this subpart, and must be signed by an authorized principal executive officer. In addition, applicants must submit a copy on electronic media using commonly-available commercial word processing software.

(c) *Number of copies.* One (1) copy of each application must be submitted in a readily reproducible form accompanied by a copy on electronic media.

(d) The following information shall be filed by the applicant in order to evaluate its suitability to hold a private remote sensing space system license. Data provided regarding the applicant's proposed remote sensing space system must be in sufficient detail to enable the Secretary to determine whether the proposal meets requirements of the Act.

Sec. 1 Corporate Information

(1) The name, street address and mailing address, telephone number and citizenship(s) of (as applicable):

(i) Applicant as well as any affiliates or subsidiaries;

(ii) Chief executive officer of the applicant and each director;

(iii) Each general corporation partner;

(iv) All executive personnel or senior management of a partnership;